

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Kaji, et al.
App. No	:	10/508,980
Filed	:	September 24, 2004
For	:	REMEDY FOR MUSCLE HYPERACTIVITY
Examiner	:	Kosson, Rosanne
Art Unit	:	1653
Conf #	:	1114

INTERVIEW SUMMARY

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is responsive to the Interview Summary sent April 8, 2008

Summary of Interview begins on page 2 of this paper.

Remarks/Arguments begin on page 4 of this paper.

SUMMARY OF INTERVIEW

Attendees, Date and Type of Interview

The interview was conducted on March 26, 2008 and attended by Rosanne Kosson, Jon Weber, and Che Chereskin.

Exhibits and/or Demonstrations

none

Identification of Claims Discussed

pending claims

Identification of Prior Art Discussed

Cited references, particularly Johnson, et al. (US 5,939,070)

Proposed Amendments

Amendment to claim 8 to emphasize that claimed invention is directed to purified botulinum neurotoxin from a botulinum toxin complex, that is free from a non-toxic proteins in the complex was proposed.

Principal Arguments and Other Matters

Applicants' representative argued that Johnson does not teach the use of botulinal toxin without non-toxic complexing proteins, stabilization of purified botulinal neurotoxin without non-toxic complexing proteins, and does not exemplify the use of any botulinal neurotoxin. Presumably, the hybrid neurotoxin taught by Johnson would be used interchangeably with known compositions such as BOTOX, but using the usual art-recognized methods, i.e., with non-toxic complexing proteins present for stability.

Johnson, et al. disclose that the complexing proteins protect the very labile toxin molecule for proteolytic cleavage and other inactivation by enzymes present in the gut and circulatory systems (col. 2, lines 5-10) and are "essential for stabilization" (col. 1, lines 62-64). As Johnson, et al. are silent regarding the use of the disclosed hybrid toxin, in light of the disclosure in the Introduction, one would assume that the hybrid toxin would need to be complexed with non-toxic protein components.

Results of Interview

While the Examiners admitted that Johnson did not exemplify the use of the hybrid toxin described, they did not find arguments that Johnson, et al. would use the toxin complexed to non-toxic complexing proteins persuasive.

However, the Examiners suggested that if the claims were amended to specify that the heavy chain and light chain were from the same serotype, arguments that Johnson, et al. teach away from the claimed invention would be persuasive as Johnson, et al. is directed to the use of a heavy chain and a light chain from two different serotypes.

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REMARKS

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 7, 2008

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